

Message Text

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PAGE 01 STATE 180128

61

ORIGIN EB-07

INFO OCT-01 EA-07 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOT-00 INR-07 NSAE-00 CIEP-01 FAA-00 L-03 XMB-02 H-02

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EXIM - RCRAFTON (INFO)

FAA/AIA -JSTEWART

DOT/OST-LNEAR(INFO)

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FM SECSTATE WASHDC

TO AMEMBASSY JAKARTA

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FOR AMBASSADOR

E.O. 11652: N/A

TAGS: EAIR, OCLR, ID

SUBJECT: CIVAIR - BAYU AIR RIPOFF

REF : JAKARTA 8374 AND 8375

1. DEPT RECOGNIZES DIFFICULTY IN TRYING TO INFLUENCE
WAY IN WHICH INDONESIANS DO BUSINESS, ALTHOUGH PRESENT
INSTANCE, IN WHICH GOVERNMENT ITSELF, AS INSTITUTION,
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PAGE 02 STATE 180128

IS REQUIRING PAYOFF, SEEMS MORE THAN NORMAL CASE OF

CORRUPTION. IN ANY CASE, WE CANNOT SIMPLY ACQUIESCE IN BAYU AIR FIVE PERCENT RAKEOFF IN RETURN FOR LANDING RIGHTS FOR U.S. CHARTERS. SUCH "NO OBJECTION" FEES ARE A POTENTIAL PROBLEM IN MANY COUNTRIES. WE HAVE RECENTLY SUCCEEDED IN HAVING THEM REMOVED IN IRAN. IF WE WERE TO ACQUIESCE IN THEM IN INDONESIA, IT WOULD BE DIFFICULT TO MAINTAIN OUR POSITION ELSEWHERE.

2. ONE POSSIBILITY IS RETALIATORY ACTION AGAINST INDONESIAN CHARTERS, COUPLED WITH MEASURES INTENDED PREVENT END-RUNS SUCH AS PAYMENT BY CONSIGNEE. SIMPLE REMOVAL OF INDONESIAN REQUIREMENT, IF OBTAINABLE, WOULD BE MORE DESIRABLE.

3. EMBASSY IS THEREFORE REQUESTED TO APPROACH INDONESIAN AUTHORITIES AT HIGHEST LEVEL IT DEEMS APPROPRIATE TO MAKE CLEAR USG CONCERN AND REQUEST REMOVAL OF REQUIREMENT FOR BAYU AIR APPROVAL BEFORE U.S. CHARTERS ARE GIVEN PERMISSION TO LAND. LIKELIHOOD OF USG COUNTERACTION MAY BE MENTIONED IF USEFUL. OTHER POINTS THAT MAY BE HELPFUL INCLUDE:

(A) "NO OBJECTION" FEES AND SUBSTITUTES THEREFOR (E.G., SWEETHEART CONTRACTS WITH BAYU) ARE A VIOLATION OF ARTICLE 15 OF THE CHICAGO CONVENTION, WHICH PROVIDES THAT "NO FEES, DUES OR OTHER CHARGES SHALL BE IMPOSED BY ANY CONTRACTING STATE IN RESPECT SOLELY OF THE RIGHT OF TRANSIT OVER OR ENTRY INTO OR EXIT FROM ITS TERRITORY OF ANY AIRCRAFT OF A CONTRACTING STATE OR PERSONS OR PROPERTY THEREON." INDONESIA IS A PARTY TO THE CONVENTION.

(B) THE UNITED STATES BELIEVES THAT THE PRINCIPLE OF "FAIR AND EQUAL OPPORTUNITY" SHOULD BE APPLIED TO ALL TYPES OF INTERNATIONAL AIR SERVICES. FOR BAYU AIR TO COLLECT A FEE ON EVERY CHARTER SIMPLY BECAUSE IT CONTROLS LANDING PERMITS IS UTTERLY FOREIGN TO THIS CONCEPT.

4. EMBASSY SHOULD ALSO POINT OUT THAT INDONESIAN LIMITATION OF FOREIGN CHARTERS TO PORTS OF ENTRY LIMITED OFFICIAL USE

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PAGE 03 STATE 180128

RESULTS IN UNEQUAL OPPORTUNITY WHEN INDONESIAN CHARTERS MAY PROCEED TO OR FROM INTERIOR POINTS IN THE UNITED STATES. UNLESS THERE IS SOME REASON FOR IT, BEYOND ELIMINATING FOREIGN COMPETITION, IT ALSO APPEARS TO BE CONTRARY TO THE SPIRIT OF PARAGRAPH TWO OF ARTICLE 5 OF THE CHICAGO CONVENTION. TO BEST OUR KNOWLEDGE, SIMILAR RESTRICTION EXISTS NOWHERE ELSE IN WORLD. FINALLY, THE U.S. COULD NOT BE SATISFIED WITH A SITUATION WHICH

PERMITTED BAYU AIR TO USE ITS CONTROL OVER TRANSPORTATION BEYOND THE PORT OF ENTRY TO ACHIEVE THE SAME RESULT IT NOW OBTAINS FROM ITS CONTROL OVER LANDING RIGHTS. YET THIS SEEMS TO BE HAPPENING ALREADY, WITH FOREIGN CHARTERS PROCEEDING TO THE INTERIOR OF INDONESIA WITH THE SAME AIRCRAFT AND THE SAME CREW AFTER REACHING AGREEMENT WITH BAYU AIR.

5. FYI: PARA TWO OF ARTICLE 5 STATES, "(AIRCRAFT OF THE OTHER CONTRACTING STATES), IF ENGAGED IN THE CARRIAGE OF PASSENGERS, CARGO, OR MAIL FOR REMUNERATION OR HIRE ON OTHER THAN SCHEDULED INTERNATIONAL AIR SERVICES, SHALL ALSO, SUBJECT TO THE PROVISIONS OF ARTICLE 7 (WHICH ALLOWS A STATE TO REFUSE PERMISSION TO FOREIGN AIRCRAFT TO CARRY FOR HIRE PASSENGERS AND CARGO TAKEN ON AT ONE POINT IN ITS TERRITORY AND DESTINED FOR ANOTHER POINT IN ITS TERRITORY), HAVE THE PRIVILEGE OF TAKING ON OR DISCHARGING PASSENGERS, CARGO, OR MAIL, SUBJECT TO THE RIGHT OF ANY STATE WHERE SUCH EMBARKATION OR DISCHARGE TAKES PLACE TO IMPOSE SUCH REGULATIONS, CONDITIONS OR LIMITATIONS AS IT MAY CONSIDER DESIRABLE." INDONESIANS WILL PRESUMABLY ARGUE THAT THEIR PORT-OF-ENTRY PROVISION IS ONE OF THE LIMITATIONS ENVISAGED, BUT IN DEPT'S VIEW SUCH A READING WOULD UNDERMINE THE SPIRIT OF THE PARAGRAPH. WE LEAVE TO EMBASSY WHETHER, IN THIS LIGHT, SECOND POINT OF PRECEDING PARAGRAPH IS WORTH MAKING.

6. WE WOULD REGARD REMOVAL OF NO OBJECTION FEE, WITHOUT ANY CHANGE IN PORT-OF-ENTRY LIMITATION, AS STEP FORWARD. HOWEVER, IN SUCH A CASE WE WOULD HAVE TO CONSIDER MEASURES TO COUNTERACT THE UNACCEPTABLE RAMIFICATIONS OF THE INDONESIAN PORT-OF-ENTRY LIMITATION, SINCE THIS LIMITED OFFICIAL USE

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PAGE 04 STATE 180128

DEVICE TOO CAN BE USED TO THWART U.S. CHARTER FLIGHTS.
END FYI. KISSINGER

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